



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL,  
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**October 20, 1975**

The Honorable Jerry (Nub) Donaldson  
Chairman, Financial Institutions Committee  
House of Representatives  
State Capitol Building  
Austin, Texas

**Opinion No. H- 723**

**Re: The effect of section 6.14  
of the Texas Savings and  
Loan Act upon the author-  
ity of political subdivi-  
sions to invest surplus  
funds in savings and loan  
associations.**

**Dear Representative Donaldson:**

**On behalf of the House Standing Committee on Financial Institutions you have asked:**

**In view of Section 6.14 of the Texas Savings  
and Loan Act (Art. 852a R.C.S.), are there any  
restrictions upon the authority of political sub-  
divisions of this state to invest surplus funds in  
savings accounts in savings and loan associations  
operating in this state?**

**The Texas Savings and Loan Act provision to which you have referred contains  
very broad language. It reads in part:**

**Administrators, executors, guardians, trus-  
tees and other fiduciaries of every kind and  
nature; counties, cities, towns and all other  
political subdivisions or instrumentalities of  
this State; insurance companies doing business  
in this State; business and nonprofit corpora-  
tions; charitable or educational corporations  
or associations; banks, credit unions and all  
other financial institutions are hereby speci-  
fically authorized and empowered to invest  
funds held by them in savings accounts of any  
association operating under this law or any  
Federal association. . . .**

If applied in its most comprehensive sense, the foregoing language would authorize fiduciaries, trustees, and public officers to invest the funds entrusted to them in savings and loan association savings accounts without regard to limitations imposed by the Texas Probate Code, the Texas Trust Act, or laws governing the selection of depositories for public monies. However, we do not believe that result was intended nor that the provision can be given that effect.

On January 1, 1964, the Texas Savings and Loan Act, article 852a, V. T. C. S., succeeded and replaced former article 881a which governed building and loan associations (Acts 1963, 58th Leg., ch. 113, p. 269). The title of the bill enacting the new law provides:

An Act arranging the Statutes of this State affecting savings and loan associations and their operations in appropriate Chapters and Sections into a consistent whole and under a single Act; defining certain terms; providing a method of forming associations; stating the powers, duties and qualifications of directors, officers and members of such associations; fixing the corporate power thereof; regulating the loans, investments and ownership of real property by such associations; providing for savings accounts and fixing rights and obligations in regard thereto; providing for the computation of earnings, transfers to loss reserves, dividends and surplus of such associations; providing for the supervision and regulation of such associations, their books and records, accounting practices, statements, reports, audits and examinations; providing for discontinuance of violations and receivership; limiting the rights of foreign associations to do business as a savings and loan association in this State; providing for conversion into Federal associations; providing for conversion into State associations and reorganization, merger, consolidation and voluntary liquidation of such associations; exempting savings accounts from

securities laws; authorizing acknowledgements to be taken before members and employees of associations who are notaries public; providing for closing of places of business; permitting associations to act to avoid losses; providing for fees to be collected by savings and loan commissioner; requiring all associations authorized to conduct a savings and loan business to conform to this Act; providing that outstanding shares, stock, share accounts and investment certificates (except Permanent Reserve Fund Stock) shall be considered as savings accounts; prohibiting the issuance of stock or shares not authorized by this Act; providing for ad valorem taxation of the property of such associations; permitting rule-making procedures to be instituted under certain conditions; providing hearing procedures; providing for judicial review; providing penalties for slander of an association, embezzlement, declaring greater dividends than earned, failing to comply with law, suppressing evidence and disclosures by examiners; repealing all laws in conflict herewith; providing for severability of the different Chapters or parts of Chapters so that the unconstitutionality of one or more shall not affect the remainder of the Act; providing an effective date; and declaring an emergency.

There is no indication contained in the title of such a sweeping change in the law regarding the investment of entrusted funds as the above-quoted language from section 6.14 of the Act would imply. Furthermore, that section of the Act, contains this additional language:

If upon the effective date of this Act the shares and share accounts of associations operating under Article 881a of the Revised Civil Statutes of 1925, as amended, are legal

investments for any particular business, organization, corporation, fiduciary or political subdivision, the savings accounts of associations subject to terms of this Act shall be deemed to be legal investments to the same extent as such shares and share accounts.

This last sentence of section 6.14 could perhaps be given an interpretation consistent with a broad construction of the earlier language, but a statute should be construed in a manner that will render it constitutional, if possible. 53 Tex. Jur. 2d Statutes §158. A broad interpretation of the section 6.14 language would cause the title of the enactment to be misleadingly narrow and, in our opinion, unconstitutional. Tex. Const. art. 3, § 35; C. Haymon Construction Company v. American Indemnity Co., 471 S. W. 2d 564 (Tex. Sup. 1971; Harris County Fresh Water Supply District No. 55 v. Carr, 372 S. W. 2d 523 (Tex. Sup. 1963); 53 Tex. Jur. 2d Statutes § 59.

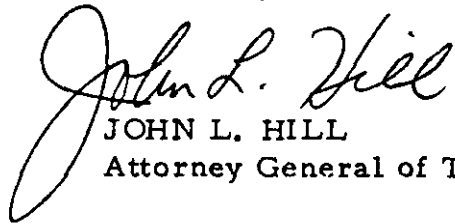
In our opinion, section 6.14 of article 852a, V. T. C. S. , was meant — and should be construed — only to signify that after passage of the Act savings accounts in savings and loan associations would be legal investments for those fiduciaries and public bodies permitted by other law to invest in similar securities. See e.g. V. T. C. S. arts. 836 and 6243e, § 23; Prob. Code § 389; but see V. T. C. S. arts. 2544 et seq., 2559 et seq. We do not believe the provision, in itself, gives any political subdivision a power to make investments unaffected by legal restrictions found elsewhere in the law of this State.

Accordingly, we answer your question in the affirmative. Without examining the entire body of law relative to financial transactions by all the various types of political subdivisions, it is impossible for us to specify all legal restrictions which might apply to the investment authority of such entities, but we call to your attention article 3, section 52 of the Texas Constitution, and the statutes previously noted.

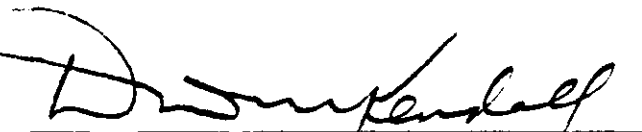
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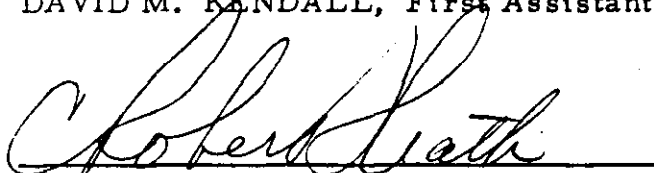
Section 6.14 of article 852a, V.T.C.S., the Texas Savings and Loan Act, does not authorize political subdivisions to invest in savings accounts of savings and loan associations without regard to legal restrictions found elsewhere upon the disposition of public monies.

Very truly yours,

  
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Attorney General of Texas

APPROVED:

  
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C. ROBERT HEATH, Chairman  
Opinion Committee